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SUBJECT: SRI LANKA: ACCESS TO GENETIC RESOURCES IN ADVANCE OF  
NEGOTIATIONS

REF: (A) STATE 9667 (NOTAL)  
(B) 2-6-09 SANJIT-WITMER EMAIL

1. Per ref A request, the following information concerning Sri Lanka's regulations governing access to genetic resources and benefit sharing is keyed below to ref A, para 20. Additional questions raised by AmEmb New Delhi (ref B) are not relevant at present as Sri Lanka's patent law does not provide for the disclosure of traditional knowledge (TK) or genetic resources (GR) in patent applications.

Legislation and regulation of research  
and collection of biological resources  
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2. Sri Lanka does not have a unified set of laws that cover all aspects of research and specimen collection on biological and genetic resources. Several articles and provisions of legislation address research aspects, including specimen collection of biological and genetic resources. These include the following: Fauna and Flora Protection Ordinance; Forest Ordinance; Fisheries and Aquatic Resources Act; National Heritage and Wilderness Act; National Aquatic Research Agency Act; and Acts of all research institutes, such as the Coconut Research Institute (CRI), the Tea Research Institute (TRI), the Rice Research & Development Institute (RRDI), and the Rubber Research Institute (RRI).

3. Relevant institutions issue permits for all aspects related to research including collection of biological specimens. This is carried out at national and provincial levels. Research proposals must be submitted to the relevant institution, at which time the research committee of that institute evaluates the proposal. In Sri Lanka, the Department of Forest and the Department of Wildlife manage protected areas. To conduct research activities and collect specimens in designated protected forests and wildlife parks, researchers (local or foreign) must obtain permits from these institutes. Research in fisheries and aquatic resources require approval from the Fisheries and Aquatic Resources Agency prior to collection of specimens.

4. The following government agencies are responsible for issuing research/collection permits for their respective biological/genetic resources:

- Wild Fauna and Flora: Department of Wildlife Conservation (DWLC);
- Domesticated Animals: Department of Animal Production and Health (DAPH);
- Forest products & biological resources of forest reserves: Department of Forest Conservation;
- Aquatic Resources: Department of Fisheries & Aquatic Resources (with concurrent permission from DWLC);
- Agricultural Crops: Relevant Research Institute (CRI, TRI, RRDI, RRI).

5. Terms and conditions addressing the concept of Mutually Agreed

Terms (MAT) are formulated by respective research committees and agencies under the respective laws and included in research application guidelines.

#### Permits for Collection of Biological Specimens

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¶16. In general, all collection of biological resources, especially for research, is regulated under the respective Acts of the above named institutions. Permits can be obtained from these authorities, unless specimens are prohibited according to relevant Acts. Specific terms and conditions are provided, depending on the use of the specimens, when permits are issued.

#### Movement of Biological Specimens

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¶17. Collection and export of non-CITES samples for research requires a Memorandum of Understanding (MOU) with the custodial institute of the biological/genetic resource and the local counterpart of the research institute. Permits for import of non-CITES biological specimens are provided by the relevant local counterpart agency after approval is provided by the relevant custodian of the specimen.

¶18. The Plant Protection Act and Animal Disease Act have provisions on phyto- or zoo-sanitary requirements needed for movement of species and products.

#### Mutually-Agreed Terms (MAT)

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¶19. Under present legislation, MAT are agreed to with approval by the relevant research institution. The respective agencies negotiate and review applications for access and use of genetic resources. The committees of these agencies determine protocol for the different applications and use of genetic resources. The Acts of respective agencies are equipped to deal with the issue of access to genetic resources and the fair and equitable sharing of benefits. Use of resources (commercial or non-commercial) is evaluated prior to granting permission. Terms and conditions for in-country and non-commercial use of genetic resources is basic and uncomplicated, according to officials at the Biodiversity Secretariat in the Ministry of Environment.

#### Status of MAT and Prior-Informed Consent (PIC)

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¶10. Presently, coordination between relevant institutes for the development of MAT and PIC issues is handled by the Biodiversity Secretariat of the Ministry of Environment and Natural Resources on a case by case basis, as requested by the national partner of the collaborative research. The proposed policy on access to genetic resources, which is currently being drafted, addresses the issue of fair and equitable sharing of benefits, with the biodiversity secretariat being nominated as the coordinating institute.

¶11. In short, the respective local counterpart researcher negotiates specific contracts for providing access to genetic resources with the approving committee of the relevant government institute. The Biodiversity Secretariat makes arrangements to sign MAT's between local research counterparts and the appropriate government institute.

¶12. National authorities responsible for receiving financial benefits arising from biological/genetic resources are identified in the MAT.

¶13. A code of ethics for biological diversity research involving access to genetic resources is published by the Biodiversity Secretariat of the Ministry of Environment. It states:

a) Research on the biological diversity of Sri Lanka shall, as far as possible, be carried out in Sri Lanka, and by Sri Lankans or with the active participation of Sri Lankans

b) The researcher shall inform the Biodiversity Secretariat of the Ministry in charge of the subject of environment of the nature of the proposed research, and specifically (a) whether foreign nationals or foreign institutions will be involved and if so the nature and extent of such involvement, and (b) full details of the genetic material or metabolites or other extracts of organisms that will be sent out of the country. In either case the purpose must be disclosed fully; failure to do so will be tantamount to a breach of this code.

c) Having regard to the facts as stated by the researcher, if the Biodiversity Secretariat is of the view that the research may give rise to discoveries leading to the development of commercial products or processes, an agreement in a form approved by the Ministry in charge of the subject of environment acting on the advice of the National Science Foundation and any other government institution shall be signed by the party abroad; such agreement shall inter alia embody clauses, as appropriate, for ensuring that Sri Lanka receives an equitable share of the benefits from the proposed research and development.

d) If the Biodiversity Secretariat is of the view that the research would not give rise to discoveries leading to the development of commercial products or processes, the Biodiversity Secretariat shall inform the researcher that no agreement in the form specified in Section 3 need be signed.

e) If, in the course of the research work, there are changes in the research protocol (from that reported earlier) or in the scope of foreign collaboration, details of such changes shall forthwith be reported to the Biodiversity Secretariat for a fresh determination of whether an agreement in terms of Section 3 has to be signed, or, if an agreement has already been signed, whether any amendments to the agreement would have to be made.

f) This Code does not obviate the requirements under existing laws, rules and regulations, of the researcher obtaining the approval of the appropriate institutions for carrying out the proposed research; using any particular site; collecting biological material; or exporting genetic material, metabolites or other extracts of organisms.

g) Notwithstanding the provisions of Articles 3,4 and 5 of this Code, in cases where foreign nationals and/or institutions are involved in research on biodiversity, the collaborating Sri Lankan researcher and/or the institution to which he is attached shall, where considered appropriate by the Ministry, through an agreement, exchange of letters, or other suitable instrument, with regard to the sharing of information, publication of results, lodging of samples and other relevant matters, ensure that Sri Lanka shares equitably in the results of the research.

¶14. Post's contact person for further inquiries on this issue is ECON - Adrian Mendis.

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